IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5714 OF 2005

Shri Jayesh D. Jhaveri : Petitioner
(Orig. Disputant)

V/s.

Kirtikumar Mulchand Mehta & Anr. : Respondents
(Orig. Opponents)

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Mr.R.V.More with Mr.Umesh R. Mankapure for the petitioner.

Mr.A.S.Kamat for Mr.A.S.Singh for the respondents.

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CORAM : S.A. BOBDE, J.

October 11, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Kamat for the respondents waives service of rule.

Heard by consent.

2. The petitioner has challenged the order of the Maharashtra State co-operative Appellate Court upholding the dismissal of the dispute raised by him.

3. The petitioner was a member of the respondent no.2 society and was allotted flat no.A/10. He sold the flat to the respondent no.1 on 11.4.1988 by an agreement. Under the agreement, he claims to have parted with the right only in flat no.A/10 and not "the right accrued regarding the said FSI". This clause was inserted by the petitioner on the basis that he is the owner of the unutilised FSI not utilised by the co-operative society. Later on, it appears that the society sold the FSI belonging to it, a part of which is claimed as belonging to the petitioner. The society received a sum of Rs.22,24,841/- and used it for repairs of the building, according to the resolution of the General Body. However, the petitioner raised a dispute against the respondent nos.1 and 2 for his share claiming additional FSI acquired by the respondent-society in proportion to the area of flat no.A/10 occupied by him prior to the sale of the flat to the respondent no.1. He valued the share at Rs.85,312/-. Both the Courts below have found that he is not entitled to any amount. The appellate Court has found that the amount which came to the society from the sale of the FSI was used for the maintenance of the society and, in any case, the society was not a party to the agreement between the petitioner and the respondent no.1 under which the petitioner claims to have reserved the FSI.

4. As a matter of fact, the Courts have come to the conclusion that the petitioner was not the owner of the balance FSI and, therefore, was not entitled to be compensated in any manner for its sale. The Courts below have found that the agreement between the petitioner and the respondent no.1 is also a registered agreement, though it purports to convey property of a value more than Rs.100/-.

5. Having heard the parties for sometime, I am of view that the impugned order is not liable to be interfered with and does not suffer from any error of law apparent on its face. It is well-known that the property, other than that which is sold to its members, is owned by the society and unless a particular member establishes his title over the property, he is not entitled to any relief in respect of such property or anything in lieu thereof. Section 36 of the Maharashtra Co-operative Societies Act, 1960 reads as follows:-

> **"36. Societies to be bodies corporate**.--
> The registration of a society shall render
> it a body corporate by the name under which
> it is registered, with perpetual succession

> and a common seal and with power to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all such things as are necessary for the purpose for which it is constituted."

It empowers the society to hold the property which may be allotted or disposed of by the society. Having regard to the fact that the petitioner has failed to establish any title over the balance FSI, I see no reason to interfere.

6. In the result, the petition is dismissed. The rule stands discharged.

Sd/-

S.A. BOBDE, J.